

Responsiveness Summary: General Comments

RESPONSE TO COMMENTS RECEIVED AFTER SEPTEMBER 18, 2004

[Note: Response to some comments regarding Resolution language are pending legal review and may not appear on this matrix]

No.	Commentator	Date	Comment	Response
01	Ventura County Coastkeeper	09/29/04	<p><input type="checkbox"/> The cost analysis assumes that the group will evaluate only three monitoring locations in a watershed. This is not enough and will only confirm existing impairments. Instead, alternative costs and sampling point strategies should be developed for negotiation. The specific goal of the monitoring should be to identify sources. Basically, there should be the most comprehensive monitoring program possible. However, with resource limitations, areas that are more impaired or at risk to become impaired, should be the priority sampling areas. During the first three years of the monitoring program, the maximum number of sites should be</p> <p><input type="checkbox"/> sampled, including those with no impairment. Sufficient sampling should be conducted to assure that no impairment exists. Reference sites will be needed to make comparisons, and it could turn out that these sites have already implemented successful BMPs and could demonstrate examples to be</p> <p><input type="checkbox"/> emulated. We currently do not have enough information, thus sampling sites should not be excluded.</p>	<p>Staff agree and have revised the monitoring program based on these and other comments by interested stakeholders. The monitoring program for the tentative waiver addresses each waterbody listed in the Basin Plan (Table 2-1, Beneficial Uses of Inland Surface Waters). Both receiving water and source characterization are addressed by this monitoring program: receiving water will be monitored at locations where agricultural discharge enters surface waters, and sites at the “end-of-field ” will be monitored where discharge leaves an enrollee’s property and does not directly enter a surface water. In the Calleguas Creek watershed, for example, there are at least 20 surface waters listed on Table 2-1 that will be monitored at locations of agricultural discharges. The exact number of monitoring locations will be influenced by the number of group and individual dischargers, and the geographic configuration of the members within a group. The monitoring locations for each enrollee (group or individual) will be approved by the Executive Officer.</p> <p>Staff are also attempting to coordinate this monitoring program with existing monitoring programs within the watersheds, including the NPDES programs, MS4 and other stormwater programs, and forthcoming TMDL monitoring programs. In the Calleguas Creek</p>

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				<p>watershed, for example, these monitoring programs add at least 15 more sites. Staff find that the scope of the monitoring program for this waiver is sufficient to characterize both agricultural sources and the overall water quality in areas of high and low risk.</p> <p>Staff have revised the monitoring program so that there is quarterly monitoring (based on wet and dry seasons) during the first 2 sampling years which then reduces to biannual sampling for the remainder of the waiver period. The Executive Officer retains authority to revise the monitoring frequency if required to address water quality concerns. Staff evaluated the costs of this monitoring program and compared those costs to the monitoring programs costs in Regions 3 and 5. The costs of the monitoring program are less than the costs in the other Regions on a per acre basis. There is incentive for growers to join groups in order to reduce monitoring costs.</p>
			<input type="checkbox"/> Staff should explore alternative sampling options such as expanding existing sampling programs with group contributions, paying responsible entities such as cities or water districts to complete the sampling, and using existing sampling programs to provide some of the data and reduce the costs.	Staff agrees. The current draft addresses this comment and provides that the Executive Officer can approve alternative sampling programs.
			<input type="checkbox"/> Other topics included a) reconsidering groundwater which discharges at so many locations, b) evaluating WDR fines in comparison to monitoring costs, c) selecting one critical area	<p>a) The resolution refers to on-going groundwater studies that will be evaluated by the Executive Officer during the term of the waiver; b)</p>

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			each year for the monitoring by a Region-wide grower supported monitoring fund, and d) quantifying MS4 impairments and urban runoff to ensure assessment is occurring during the Waiver period.	Staff will attempt to address the cost issue in the Staff Report, c) The basis for monitoring is watershed for Groups and end-of-property for individuals. The Executive Officer can approve alternative monitoring and reporting plans proposed by dischargers. d) Staff agrees and will attempt to consider this during implementation of the waiver.
	Ventura County Coastkeeper	10/11/04	<p>□ How many monitoring sites per watershed or major reach are anticipated? In an effort to identify source pollution, an adequate number of sampling locations will be required. Heal the Bay samples at 20 sites in the Malibu Creek Watershed. Santa Barbara Channelkeeper/Ventura Surfrider monitors 15 sites in the Ventura River Watershed. Ventura Coastkeeper is planning to monitor at least 10 sites in the Calleguas Creek Watershed. Friends of the Santa Clara River plans to monitor at least 10 sites in the Santa Clara River Watershed. I'm not aware of for Fiends of LAR and Friends of the San Gabriel River water quality monitoring programs, but perhaps they are being conducted. I bring this up for two reasons. First, there are a minimum number of sampling locations required to obtain useful data, and I would encourage communication with existing monitoring programs to discuss optimal locations and number of locations monitored. Second, to utilize resources more efficiently, perhaps these non-profit organizations could participate in the sampling portion of the MRPs. Additionally, the Ventura County Watershed</p>	The exact number of sites will be determined by the number of groups and individuals their proximity to receiving waters. The minimum number of sites is determined by the list of receiving waters, number of discharge points, and the number of group and individual dischargers. In the Calleguas Creek watershed, for example, there are at least 20 surface waters listed on Table 2-1 that will be monitored at locations of agricultural discharges. The exact number of monitoring locations will be influenced by the number of group and individual dischargers, and the geographic configuration of the members within a group. The monitoring locations for each enrollee (group or individual) will be approved by the Executive Officer.

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			<p>Protection District also has a monitoring program which may be able to participate.</p> <p><input type="checkbox"/> In Section II. Discharger Group Water Quality Monitoring, A.1. Requirements for Watershed Receiving Water Quality Monitoring, paragraph 3, it states that "Limited discharge monitoring within each group will be based on a schedule wherein each individual discharge within the group shall be monitored at least once during the term of the Waiver." Was this suppose to state each individual "discharge" or "discharger" within the group shall be monitored at least once during the term of the Waiver? Both alternatives would be good methods for source identification. In either event, multiple sampling sites would be required.</p> <p><input type="checkbox"/> Could you clarify the requirements for reporting pesticide and fertilizer applications? In Section I. Description of Monitoring and Reporting Program, A. Group Dischargers, "a copy of the monitoring plan, records of pesticide and fertilizer application" are to be maintained by the discharger for inspection. In Section II. Discharger Group Water Quality Monitoring, A.1. Requirements for Watershed Receiving Water Quality Monitoring, the detailed MRP Plan that is to be submitted to the Regional Board "shall describe...the chemicals being used..." Yet, in Section III. Description of Reporting Requirements,</p>	<p>The requirement has been deleted, and end of property monitoring within a group is based on the group's water quality control plan.</p> <p>Pesticide and fertilizer types are to be described in the NOI and WQMP.</p>

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			"chemicals being used" is not included in the elements that shall be included at a minimum in the MRP Plan. Are chemicals used and application schedules to be part of the submitted MRP Plan, required for admission to a group, or only to be maintained for inspection? Information submitted up front would greatly assist in the selection of monitoring locations and would expedited implementation of a Corrective Action Plan if necessary.	
02	Western Growers Association	10/08/04	<ul style="list-style-type: none"> <input type="checkbox"/> The Draft Waiver Should Be Revised to Emphasize Implementation of Management Practices Rather Than Testing and Compliance of Runoff With Numeric Water Quality Standards. <input type="checkbox"/> The Draft Waiver Should Be Revised to Clearly Identify a Reasonable Number of Pollutants of Concern Related to Farming Practices That Should be Controlled and Monitored by Agricultural Operators. <input type="checkbox"/> The Draft Waiver Should Be Revised to Require That Agricultural Runoff Must Be Determined to Cause or Contribute to Exceedences of Applicable Receiving Water Limitations Before Noncompliance Is Determined to Occur. <input type="checkbox"/> The Draft Waiver Should Be Revised to Appropriately Apply Receiving Water Limitations. <input type="checkbox"/> The Draft Waiver Improperly Imposes Numeric Standards on Agricultural Runoff That Are Stricter Than Applicable Receiving 	<p>The draft waiver emphasizes both management practices and monitoring to ensure the effectiveness of the management practices.</p> <p>Attachment A identifies the pollutants to be monitored. The pollutants are related to farming, as described in the Basin Plan, Page 4-37.</p> <p>The waiver is being issued under Water Code section 13269, which requires the Regional Board to determine, among other things, that the discharge will be consistent with any applicable state or regional water quality control plan (i.e., with the Basin Plan). As a result, the Regional Board has fairly broad discretion in determining what it means to be "consistent." Establishing triggers based on comparing monitoring data with receiving water limitations (i.e., applicable water quality standards) provides the necessary information for the Regional</p>

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			<p>Water Standards and That Will Require Dischargers to Install Treatment Facilities.</p> <p>a) The Draft Waiver Unreasonably Applies Numeric Limits to Runoff and Stormwater.</p> <p>b) The Draft Waiver Unreasonably Imposes Stricter Regulation on a Single Class of Dischargers Than Currently Imposed by Applicable Law and Regulation.</p> <p>c) The Draft Waiver Unreasonably Requires Dischargers to Install Treatment Facilities.</p> <p>d) The Draft Waiver, In Effect, Unreasonably Eliminates the Low-Risk Discharger Designation.</p> <p><input type="checkbox"/> The Monitoring and Reporting Program Imposed on Group and Individual Dischargers Is More Burdensome Than Any Other Agricultural Discharge Monitoring and Reporting Program Adopted in the State.</p> <p><input type="checkbox"/> The Draft Waiver Should Be Revised to Provide for Entry and Inspection at Reasonable Times.</p> <p><input type="checkbox"/> The Draft Waiver Should Be Revised to Achieve Consistency.</p>	<p>Board to make the required demonstration that the irrigated lands regulated by the conditional waiver are discharging consistent with the Basin Plan. Similarly, it provides sufficient information to serve as the basis for a noncompliance determination.</p> <p>Staff disagrees that the receiving water limits are inappropriately applied. Exceedances of receiving water limits triggers preparation and implementation of WQMPs.</p> <p>See above.</p> <p>The Order has been revised to reflect that reasonable notice shall be provided before most inspections. In emergency situations affecting public health and safety, Water Code section 13267(c) allows the Regional Board to conduct inspections without a warrant or consent. As a result, language has also been added to reflect this legal authority.</p> <p>Waiver language has been revised to eliminate references to treatment.</p>

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				<p>The draft Waiver allows the Executive Officer to classify low risk dischargers based on information provided by dischargers.</p> <p>Staff recognizes this issue, and the current draft of the waiver is in accordance with Porter-Cologne</p>
03	Ventura County Farm Bureau	10/08/04	<p><input type="checkbox"/> Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands</p> <p>a) Finding 13 – We suggest the alternative language in order to be consistent with the requirements of the California Water Code. The previous language is somewhat awkward and cumbersome.</p> <p>b) Finding 15 – It is necessary to clarify that the State’s Implementation Policy for Toxic Pollutants has limited applicability to nonpoint sources of pollution and specifically refers to the State’s Nonpoint Source Management Plan as the appropriate state policy for the implementation of the toxic criteria to nonpoint sources of pollution.</p> <p>c) Finding 20 – The Central Coast and Central Valley Regional Boards, as well as the State Water Resources Control Board, have all recognized that compliance with water quality objectives for agricultural sources of pollution will take time, and for many</p>	<p>Staff agree – See revised language</p> <p>The waiver appropriately relies on the California Toxics Rule for determining “receiving water limits” for certain toxic pollutants. It is important to recall that the draft waiver is not establishing effluent limitations for discharges from irrigated lands. Instead, it is establishing conditions that allow the Regional Board to make the required finding that the waiver is in the public interest and consistent with any applicable state or regional water quality control plan.</p> <p>The draft waiver is not attempting to use the State Board’s Implementation Policy for Toxic Pollutants (CTR-SIP) to implement</p>

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			<p>pollutants may not occur within the term of the waiver. This is especially true for some legacy pollutants found in sediment such as DDT, PCBs, etc. As currently drafted, the waiver would require compliance with all water quality objectives by the end of the waiver. We do not see that as a feasible requirement. Ultimately, such a requirement may undermine the usefulness of the waiver altogether. In addition, a “corrective action plan” is a terminology commonly used in the regulation of point sources and is not applicable to agricultural nonpoint source pollution. As an alternative to requiring compliance with water quality objectives within the term of the waiver, we recommend that the waiver require the preparation of a water quality management plan for water quality objectives that are exceeded as is indicated by the required monitoring program. The water quality management plan must include time certain steps for the implementation of management practices that are designed to protect water quality and meet the goals and objectives for a water quality management plan as required by Appendix D (as amended).</p> <p>d) Finding 23 – Alternative language is suggested to clarify the types of monitoring that will be conducted by individuals applying for waiver coverage as an individual, or monitoring that will be required of Discharge Groups. It also suggests that if the</p>	<p>the California Toxics Rule issued by USEPA. Instead, the waiver is following the management practices and monitoring approach specified in Tier 2 of the State Board’s Nonpoint Source Policy.</p> <p>To the extent the waiver uses California Toxics Rule criteria for certain triggers, it is appropriate. As stated previously, the Regional Board must make the determination that the discharge is consistent with the Regional Board’s Basin Plan. The Basin Plan prohibits the discharge of toxic pollutants in toxic amounts and indicates that receiving waters shall be free of toxicity. The USEPA issued the California Toxics Rule to provide numeric criteria that identify when discharges and receiving waters are toxic. In other words, the California Toxics Rule contains federal water quality standards that recognize when living organisms die or are mutated by toxic pollutants. When a receiving water has toxic constituents in excess of the California Toxics Rule criteria, the receiving water is toxic and would be in violation of the Basin Plan’s narrative toxicity objective.</p> <p>For purposes of this waiver, it is appropriate to establish triggers based off toxicity as defined in the California Toxics Rule. The commenter assumes that different (less-stringent) numbers for irrigated lands would be appropriate. However, for purposes of determining what is toxic at what amount (i.e., for determining consistency with the</p>

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			<p>initial monitoring indicates exceedances of water quality objectives, then additional monitoring may be required of the group. Such additional monitoring may include monitoring at the end of agricultural properties to properly characterize agricultural runoff. By characterizing agricultural runoff from typical properties within the Discharge Group area, the discharge group can formulate an appropriate water quality management plan to address the pollutants of concern. This approach is more reasonable as compared to requiring the edge of field monitoring for every participant within a Discharge Group once within the term of the waiver.</p> <p>e) Finding 35 – This language is offered to better clarify the distinction between individuals and groups and the process requirements for changing from being an individual discharger to a participant of a group discharge program and vice versa.</p> <p>f) A.2 – Suggested language has been added to Table 1 that reflects the changes suggested in other provisions of the conditional waiver. The suggested language also attempts to clarify the application of the schedule to Group Dischargers, which is presently absent.</p> <p>g) A.4 – Clarification is provided regarding the Executive Officer's responsibility for reviewing NOI applications and responding to applicants in a timely manner.</p>	<p>narrative toxicity objective), the discharge source does not matter. Five ppb of a toxic pollutant discharged from irrigated lands will have the same toxic effect as five ppb of the same toxic pollutant discharged from a POTW. The draft waiver appropriately uses triggers based off the California Toxics Rule in establishing the conditions of the waiver.</p> <p>The Regional Board staff does not expect that water quality objectives will be completely achieved in all waters of state in the Los Angeles Region within the term of this Resolution. However, the conditions of the Waiver will require actions that will lead to achieving water quality objectives. See revised language</p>

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			<p>h) A.6 – Similar to A.4 above, the Executive Officer’s responsibilities are clarified in the suggested language.</p> <p>i) A.8 – We suggest deleting the requirement for the implementation of management practices that is not directly tied first to a finding that water quality objectives are exceeded. As currently proposed, all growers must implement “best management practices” for waiver coverage. The implementation of such practices may not be necessary if objectives are not exceeded. Therefore, such a requirement is not necessary just to obtain waiver coverage. We also suggest that the language in 8.b is unnecessary for compliance with all provisions of the waiver would automatically include preparation of a water quality management plan in the case of a water quality exceedance.</p> <p>j) A.10 – It is important to articulate that compliance with the terms of the waiver may be met by participating in a Group but that the Group itself is not responsible for individual participants. The Group NOI and monitoring efforts are designed to provide administrative efficiencies for growers as well as the Regional Board, and to provide water quality management planning answers on a watershed or sub-watershed level. The Group is not legally able to take on the Regional Board’ enforcement responsibilities. Therefore, we recommend the suggested language to clarify individual and group responsibilities for</p>	<p>Staff agrees – See revised language</p>

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			<p>compliance with the terms of the waiver.</p> <p>k) B.2.a – The Notice of Intent in Attachment B.2 requires extensive individual participant information that may be difficult to gather in the time frame anticipated for completion of an NOI after the waiver is adopted. We recommend that the Group NOI information requirements be streamlined to include a basic membership document and allow Discharge Groups to gather additional participant cultural practice information if the first year of monitoring indicates that water quality objectives are exceeded.</p> <p>l) B.3 – Subsection b is not clear as to what is being required.</p> <p>m) D.1 – It is important to recognize that agricultural properties often receive stormwater and urban runoff from other adjacent properties that are not related to the agricultural operation. Agricultural landowners and operators should not be held responsible for the runoff of others.</p> <p>n) G.1 – The application of receiving water limitations 50 feet down gradient of the furthestmost extent of the discharge from irrigated lands is problematic legally and practically. First, there is nothing in state law that indicates that a water of the state (e.g. the receiving water) is 50 feet down gradient. With this application of receiving limits, agricultural drains are now subject to state water quality objectives to the same extent as mainstem</p>	<p>Staff agrees – See revised language</p> <p>Staff agrees – See revised language</p> <p>Staff agrees – See revised language</p> <p>Staff agrees – See revised language</p> <p>Staff believe that the requirement to implement BMP to minimize pollutants loading is necessary even water quality objectives are not yet exceeded but may have the potential in the future.</p>

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			<p>waterways. We do not believe that state policy supports such an interpretation. Second, in stormwater runoff situations, it may be difficult to determine where the discharge point is from a particular piece of property. In such cases, how is one to determine the furthestmost discharge point. In lieu of the language suggested by the Regional Board, we recommend determining compliance at the monitoring sites, as approved by the Executive Officer.</p> <p>o) G.5 – We suggest deleting the application of Title 22 requirements to the receiving waters. Title 22 applies to water used for reclamation purposes, not surface water. It is also a standard that is applied to treated wastewater that is used for reclamation purposes, not agricultural runoff. Due to the major influence of wildlife on agricultural receiving waters, it is unlikely that such waters could reach the very stringent Title 22 requirements for coliform.</p> <p>p) G.9 – Similar to the comments in G.5, we do not agree with the imposition of Title 22 requirements on receiving waters.</p> <p>q) I.1 – It is important to clarify that the individual participants of the Discharge Group are ultimately responsible for compliance with the terms of the waiver, not the Group as a whole.</p> <p><input type="checkbox"/> Monitoring and Reporting Program Order Number R4-2004- yyyy for Discharger Group</p>	<p>Staff agrees – See revised language</p> <p>Note taken and the time frame will be discussed with stakeholders.</p>

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			<p>\$7,244.00 per year. This estimate includes the analytical costs for the constituents identified in the revised MRP, monitored four times in one year. It does not include the costs associated with developing the Monitoring and Reporting Plan, Notice of Intent, QAPP and other administrative costs associated with compliance with the waiver. It also does not include costs associated with the development and implementation of a Water Quality Management Plan when water quality objectives are exceeded.</p> <p>❑ Attachment D – Corrective Action Plan</p> <p>The “Corrective Action Plan” provided as an attachment with the Conditional Waiver is a regulatory requirement for point sources and is not applicable in this context to agricultural nonpoint sources of pollution. Instead of requiring the development of a “Corrective Action Plan,” we recommend that individuals or Discharge Groups be required to prepare water quality management plans when water quality objectives are exceeded. This approach is consistent with other Regional Board approaches and State Board policy. In addition, we have suggested a number of revisions to change the nature of the “Corrective Action Plan” to coincide with the realities of farming and the development of agricultural water quality management plans.</p>	<p>Title 22 numbers for coliform have been removed from the benchmark receiving water limitations. Staff notes that bacteria are addressed by monitoring and the “receiving water limits.”</p> <p>See above</p> <p>Staff agrees - See revised language</p> <p>Staff agrees – See revised language</p>

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				<p>This provision is revised to eliminate the requirement for a “Farm Plan.” The technical aspects of a Farm Plan are likely to occur in a detailed NOI. The time frame to submit the NOI will be discussed and included in the public draft.</p> <p>The cost study has been updated in light of this issue. Please refer to the revised cost study and monitoring and reporting programs.</p>

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				Note taken. The title of attachment D was changed to “Water Quality Management Plan”. See revised document.
04	Newhall Land	10/08/04	<p><input type="checkbox"/> Identify reasonable number of pollutants related to agricultural operations</p> <ul style="list-style-type: none"> - We continue to be confused as to the exact constituents that should be monitored for surface waters, and the applicable standards that will be used to evaluate discharger compliance with the Waiver’s condition - To make the Waiver more understandable and to facilitate implementation by agricultural operators, we request that the Tentative Waiver be revised to establish a single list of a reasonable number of pollutants of concern for which monitoring will be conducted and which will be used assess compliance with the Waiver. - We would suggest that this list should be tailored to address more general water quality parameter that serve as indicators for pollutants that are reasonably related to agricultural operations, rather than over 80 pollutants currently identified in the Tentative Waiver. - The Tentative Waiver should then make it clear that if the 	<p>Staff agrees – See revised language</p> <p>Staff agrees – See revised language</p> <p>The list reflects the Basin Plan, pages 4-37. Water quality objective shall be clearly defined based on the Basin Plan and any other applicable regulatory standard for pollutant of concern that related to agricultural operations. See revised language</p>

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			monitoring and reporting standards are not meet, adjustment in BMPs and more extensive monitoring may be required, but should clarify that noncompliance penalties would not be triggered.	Staff agrees – See revised language
			<input type="checkbox"/> Emphasize education and implementation of BMP rather than moving directly to a numeric water quality standard approach	The current draft requires 8-hours per year of education.
			<input type="checkbox"/> If numeric standards are incorporated, they should apply to receiving waters and ensure that noncompliance is the result of agricultural runoff	Staff agrees. A list of receiving waters has been developed.
			<input type="checkbox"/> The low-risk discharger category and the reduced monitoring requirements encourage innovative strategy to protect water quality	Staff agrees.
			<input type="checkbox"/> Group monitoring is the preferred approach to implementation of the waiver program, but still requires clarification	The current draft and guidance materials clarify the requirements for group monitoring.
			<input type="checkbox"/> Los Angeles region monitoring cost should be comparable with that of the other waiver programs	Staff agrees and has developed cost comparisons showing that the costs are comparable.
			<input type="checkbox"/>	
			<input type="checkbox"/>	